

No. 9(1)82-6Lab/5316.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to Publish the following award of the Presiding Officer, Industrial Tribunal, Faridabad in respect of the dispute between the workmen and the management of M/s Free wheels (India) Ltd. 57—Industrial Area, Faridabad.

BEFORE SHRI M.C. BHARDWAJ, PRESIDING OFFICER, INDUSTRIAL TRIBUNAL, HARYANA, FARIDABAD

Reference No. 115/1979

Between

SHRI KANHAI RAM, WORKMAN AND THE MANAGEMENT OF M/S FREE WHEELS (INDIA) LTD., 57—INDUSTRIAL AREA, FARIDABAD.

Present :—Shri R.N. Roy, for the workman.

Shri R.N. Rai, for the management.

AWARD

The State Government of Haryana referred the following dispute between the workman Shri Kanhai Ram and the management of M/s Free Wheels (India) Ltd., 57—Industrial Area, Faridabad, by order No. 11/4/79/14945, dated 30th March, 1979, to this Tribunal, for adjudication in exercise of powers conferred by clause (d) of sub-section (1) of Section 10 of the Industrial Disputes Act, 1947 :—

Whether the dismissal of Shri Kanhai Ram was justified and in order ? If not, to what relief is he entitled ?

Notices of the reference were sent to the parties who appeared and filed their pleadings. On the pleadings of the parties, the following issues were framed by the Learned Predecessor, dated 7th September, 1979 :—

- (1) Whether the enquiry held by the management is proper ?
- (2) Whether the termination of services of the workman was justified and in order ?

Issue No. 1 was tried as preliminary issue and enquiry was set aside by my order, dated 17th June, 1980. The management went in the writ against the order and parties agreed there for fresh order on this issue. Arguments were again heard and by my order, dated 26th May, 1981, this issue was decided in favour of the management.

Issue No. 2.—The management examined Shri V.P. Singal, Personnel Officer as MW-2 and workman examined Shri Jhandu Ram, workman as WW-2 and the workman himself appeared as WW-1 as his own witness. MW-2 deposed that dismissal letter Ex. M-24 was issued by Shri H.R. Malhotra. The personal record of the workman was called for by the Factory Manager. The workman had been issued show cause notice in the year 1975, copy of which was Exhibit M-25. His thumb-impression appeared on this and another show cause notice was Exhibit M-26 and others papers concerning to it were Exhibit M-27 to M-31. Copy of settlement was Exhibit M-32. He further deposed that dismissal letter Exhibit M-24 was issued in respect of charge-sheet Exhibit M-4 which was about a loss of Rs. 15,000 and one day's production loss. In cross-examination, he replied that Shri H.R. Malhotra was works Manager and Factory Manager. The broken machine

was irreparable and instead another machine was manufactured. On the given date, the workman was operating rolling machine. There were only three process machines in the factory. The first process of free wheel manufacturing started through C-4 machine. The name of the referred part was sprocket which was known in the company by C-11. He further replied that setting of machine was done by a setter but some time, operator also does the job. He denied the suggestion that the concerned workman could not read gauge of the machine. He was illiterate. He denied the suggestion that supervisor had checked the production on that day. He admitted that the machine had broken while on operation and a bolt was found on it. Dismissal letter was signed in his presence but Factory Manager had not discussed anything with him. He did not know if amount of loss could be recovered from the workman under the payment of Wages Act but he admitted that no such recovery was made by the factory. WW-2 deposed that he was press operator for the last 13 years. On 16th June, 1978, the items produced by the concerned workman were brought to him for boring. He did not notice any defect into it. The rolling mill was on working operation on 17th June, 1978. The concerned workman had not gone on strike. Again said that he had got strike in the factory but later on the matter was settled. He replied that if rolling mills stop the work, whole of the factory remains idle. In cross-examination, he stated that at that time there were two rolling mills whereas now there are four. He admitted that there was inspection department who inspect the produced goods. He admitted that the item of rolling mills were inspected and only then given for further process to the next machine operator. He admitted that he received the copies only after inspection. The concerned workman deposed that he was not supplied enquiry report before dismissal. No deduction was made from him on account of loss by breakage in the machine. A bolt from gear had struck in the machine. He admitted that he was once suspended on the allegation of strike. His production was normal which was fixed 600 pieces average. On production of 700 pieces, 60 paise incentive was payable. In cross examination, he replied that he put thumb impression. He did not know if company had standing order. He denied that a loss of Rs. 15,000 had occurred by his negligence. He admitted that the strike had ended on the settlement before Labour-cum-conciliation Officer.

The learned representative for the management argued the workman was charge-sheeted for go-slow and negligence whereby break down of machine. Domestic enquiry was held and workman was found guilty. His previous record was also taken into account by authority. He referred to statement of Shri Chaman Lal, supervisor recorded in the enquiry and pointed out that out of 600 pieces 500 pieces were found defective by the supervisor. He cited 1965 volume 11 F.L.R. page 196, 1974 L.I.C. page 4 and 1962 S.C.R. page 684. On the other hand, the Learned representative of the workman argued that the domestic enquiry was defective. He further argued that the charge of slow down was not proved by any cogent evidence not the production record was placed before the enquiry officer. As regard the second charge, he argued that it was only an accidental mishap and the same was not deliberated. There was no negligence by the workman. No deduction from the wages was made by the management.

I have considered the documents placed on record by the parties and find that the workman was charge-sheeted for go-slow and negligence thereby put into loss of production to the management. In the enquiry report, the supervisor states that the workman had produced 600 pieces in the shift against normal production of 700 pieces, out of total 500 pieces were found defective with Flange Diamore than required. It is also reported that the concerned workman had checked the material time to time and he was negligent causing great loss of production to the management. Another report from maintenance department, said that there was an accident of rolling machine by coming out of central bolt between gear. The bolt could not come out itself. It was a deliberate act. All the three gears and two shafts of the machine were badly damage beyond repair. It needed replacement. On these two reports, the explanation of the workman was called and he was charge-sheeted on two grounds.

I have gone through the evidence and find that the production of 700 pieces earned an incentive bonus for one hundred pieces but normally operator produces 700 pieces. Technically the workman could not be penalised for go-slow because he lost the incentive bonus of one hundred pieces. However, the workman was charge-sheeted for negligence and deliberate act causing loss to the management. Therefore the management could have inferred the go-slow on his part. Because there is no production record of the workman, on the file, therefore, I am unable to find the normal production of the concerned workman. This charge in my opinion is not proved by the management. As regard the other charge an act of negligence stood prove beyond doubt because out of total production of 600 pieces, 500 pieces were found defective. The allegation that he did not check the production from time to time, was correct. It is also into evidence of the supervisor that a central bolt could come and struck into gears. It was an deliberate act. The machine had been damaged beyond repairs. This evidence is of a technical hand and held to be believed. No expert or other evidence was produced on behalf of the workman who could through light on such accident. The dismissal letter was passed after holding a regular domestic enquiry. Past record of the workman was also not good. He had tendered appology. The learned representative pointed out that this was a fit case to set aside the dismissal under Section 11-A because it was an accident but I am not inclined to agree with the workman as given by him above. Therefore, I do not find any reason to interfere in the action taken by the management.

While answering the reference, I pass my award that the workman was not entitled to any relief.

M. C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

Endorsement No. 527, dated the 22nd May, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour and Employment Departments, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

M.C. BHARDWAJ,

Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

The 17th May, 1982

Reference No. 434/1978.

Between

No. 9(1)82-6Lab./4270.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Industrial Tribunal Faridabad in respect of the dispute between the workman and the management of M/s. Ottino (India) Pvt. Ltd., Mathura Road, Faridabad:—

SHRI MAHAVIR PARSHAD WORKMAN AND
THE MANAGEMENT OF M/S. OTTINO
(INDIA) PVT. LTD., MATHURA ROAD,
FARIDABAD.

Present:—Shri Darshan Singh, for the workman.
Shri H. L. Kapoor, for the management.

AWARD

BEFORE SHRI M. C. BHARDWAJ, PRESIDING
OFFICER, INDUSTRIAL TRIBUNAL,
HARYANA, FARIDABAD.

The State Government of Haryana referred following dispute between the workman Shri Mahavir Parshad and the management of M/s. Ottino (India) Pvt. Ltd., Mathura Road, Faridabad, by order No. ID/FD/88/78/42058, dated

18th September, 1978, to this Tribunal, for adjudication in exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 :—

Whether the termination of services of Shri Mahavir Parshad was justified and in order ? If not, to what relief is he entitled ?

Notices were issued to the parties who appeared and filed their pleadings. On the pleadings, the following issues were framed by my learned predecessor,—vide order dated 5th March, 1979 :—

- (1) Whether the dispute is pre-mature ?
- (2) Whether the termination of services of the workman was justified and in order ?
- (3) If not to what relief is he entitled ?
- (4) Whether the workman is gainfully employed ?
- (5) Whether the domestic enquiry is fair and proper ?

The case was fixed for the evidence of the management who examined Shri H. L. Kapoor, Enquiry Officer as MW-1 and closed its case. The workman examined himself as WW 1. Argument heard.

Issue No. 1

The learned representative of the workman argued that the workman submitted his demand notice on 19th December, 1977 whereas the enquiry was still in process. The learned representative of the workman argued that the reference was not being matured because the same made by the Government on 18th September, 1978 long after the alleged dismissal by the management. I have gone through the demand notice in which the workman alleged that his services were terminated by not allowing him duties with effect from 19th December, 1977. I have also gone through the conciliation report Ex. W-2 in which the workman took the same stand. The version of the management was that the charge-sheet was offered to the workman on 17th December, 1977 but he refused to receive the same. It was sent through registered post but was returned with the report that the addressee was not found despite various visits by the postman. It is further written that another letter was sent by the management C/o General Secretary, Faridabad Engineering Workers Union which was

received by the union. The workman was still in service and domestic enquiry was being held against him. The management has placed on record a registered letter's cover which bears registration stamp of the post office dated 17th December, 1977. I found from the evidence that demand notice was given prior to the alleged dismissal orders but the orders of reference by the Government was post dismissal. The dismissal orders being dated 10th May, 1978 and placed in evidence as Ex. M-5, therefore I do not find that the reference was pre-matured.

Issue No. 5

This issue is regarding enquiry, therefore, it is being taken earlier to other issues.

The management examined Shri H. L. Kapoor enquiry officer as MW-1 who deposed that he was appointed enquiry officer,—vide Ex. M-1, to enquire into charge-sheet Ex. M-2. The enquiry proceeding was Ex. M-3 and findings Ex. M-4. The other papers received during the enquiry were Ex. M-6 to M-9. The workman did not participate in the enquiry despite notices. He was found guilty. In cross examination, he replied that he had sent notices of enquiry on the address supplied by the workman but he had no A. D. Form in token of receipt of the notice. He denied the suggestion that the enquiry was conducted after sending the conciliation report to the Government. The concerned workman who appeared as WW-1 stated that he had received a letter from the enquiry officer which was replied,—vide Ex. M-6. No reply was received by him again from the management. He had received a letter of enquiry after the conciliation meeting. In cross examination he stated that he did not receive the copy of charge-sheet. I have gone through the enquiry file and found that the workman was sent notice of enquiry by him,—vide A. D. Card Ex. M-7, another letter was received from the enquiry officer,—vide Ex. M-9 which is also acknowledged by the workman in his letter Ex. M-6. The workman took the stand that for about two months, the management did not participate in the conciliation proceeding and the workman wanted proceeding only before the conciliation officer and not any other authority. The enquiry officer recorded the statements of four witnesses including Avinash Gupta complainant. The charge was that the concerned workman along with some other workers joined issue with Shri

Avinash Gupta, Work Incharge regarding acceptance of demands of the workmen. He picked up querrel with him and abused. The enquiry is ex-parte. The concerned workman did not participate even after receipt of notices. Further I do not find any defects in the enquiry. I hold this issue in favour of the management.

Issue No. 2

The management did not examine any witness except the enquiry officer who was not an employee of the management rather he was assistant of their legal adviser. The concerned workman stated that he joined services on 1st January, 1973 and his services were terminated on 19th December, 1977. He was a union leader and he had made a complaint against the tool room in charge. In cross examination, he replied that he did not receive charge-sheet or dismissal order. I have gone through the charge-sheet and found that the charge was about mis-behaviour by the concerned workman alongwith some other worker during the lunch hour. It is also in the charge-sheet that the workman had alleged that Shri Gupta was not getting the demands of workers redressed from the management. It is given in para No. 2 of the charge-sheet that all the workers resorted tool down from 2—15 to 4—10 on the next day of the above said incident. On the charge-sheet, I find that it was not individual action of the workman rather there were some others. It is also mentioned that the workman agitated for redressal of some of their demands. They also resorted to tool down strike for about few hours on the next date. As there none appeared from the management, therefore, there is nothing to show whether any action was taken against the other workmen and also as to what were the demands of the workmen which gave rise to the quarrel in question. The management has also not placed on record and proved the rules or standing orders under which the action of dismissal was taken against the workman. I find that there was no personal quarrel of the concerned workman with the complainant which ended in the dismissal. The punishment given to workman was too severe even-after he exceeded his right of redressal of the grievances of the workman. Therefore, I set aside the dismissal order and order the re-instatement of the workman. However he will not be entitled to full back wages because he failed to participate in the domestic enquiry held against him and charges

were proved in the ex-parte proceeding by the enquiry officer. In the fitness of thing, he will be entitled to a compensation of Rs. 2,500 (Rupees Two thousand five hundred only) in lieu of back wages in addition to re-instatement with continuity of service.

As regards issue No. 3 regarding gainful employment, no evidence was lead by the management. So this issue is decided against the management.

While answering the reference, I give my award that the workman was entitled to his re-instatement with continuity of service and the workman was entitled to a compensation of Rs. 2,500 in lieu of back wages.

Dated 15th April, 1982.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana
Faridabad.

Endorsement No. 411, dated 22nd April, 1982.

Forwarded (four copies) to the Secretary to Government, Haryana, Labour & Employment Departments, Chandigarh, as required under Section 15 of The Industrial Disputes Act, 1947.

M. C. BHARDWAJ,
Presiding Officer,
Industrial Tribunal, Haryana,
Faridabad.

No. 9(1)82-6Lab./4529.—In pursuance of the provision of section 17 of the Industrial Disputes Act, 1947 (Act No. XIV of 1947), the Governor of Haryana is pleased to publish the following award of the Presiding Officer, Labour Court, Faridabad in respect of the dispute between the workmen and the management of M/s. Indo Swiss Times Ltd., Delhi-Gurgaon Road, Gurgaon.

IN THE COURT OF SHRI HARI SINGH
KAUSHIK, PRESIDING OFFICER, LABOUR
COURT HARYANA, FARIDABAD.

Reference No. 235 of 1981.

between

SHRI LAL MAN, WORKMAN AND THE RESPONDENT
MANAGEMENT OF M/S. INDO SWISS TIMES LIMITED,
DELHI-GURGAON ROAD, GURGAON.

Workman in person.

Shri Ashok Difakar, for the respondent management.

AWARD

This reference No. 235 of 1981 has been referred to this Court by the Hon'ble Governor of Haryana,—vide his order No. ID/GGN/54/81/44870, dated 2nd September, 1981, under section 10(i) (c) of the Industrial Disputes Act, 1947, existing between the workman Shri Lal Man and the respondent management of M/s. Indo Swiss Times Limited, Delhi, Gurgaon Road, Gurgaon. The terms of the reference was:—

Whether the termination of service of Shri Lal Man was justified and in order? If not, to what relief is he entitled?

Notices were issued to the parties on receiving this reference. The parties appeared and filed their pleadings. The case of the workman according to the demand notice and claim statement is that he was appointed on 31st August, 1979 as watchman and worked very honestly. The respondent terminated the services on 9th February, 1981 without any cause or notice to the claimant. The termination is unjustified and the claimant is entitled for the reinstatement with full back wages and continuity of service. The case of the respondent is that the service of the workman came to an end on account of loss of lien under clause 13-D of the standing order which provides automatic termination of service so the case does not come under the scope of Industrial Disputes Act. The workman was appointed on 31st August, 1979 on probation and he started remaining absent without any information with effect from 10th February, 1981. The management sent him a letter on 13th February, 1981 asking him to join his duty but the workmen did not join his duties. On 20th February, 1981 another letter was written to the workmen drawing his attention towards clause 13-D of the standing orders which provided loss of lien. He was informed that if he is interested in service he may report to the Factory Manager with a written explanation if any. In spite of this letter the claimant did not report for duty, and so lost his lien. The respondent received first letter from the claimant on 23rd March, 1981 as demand notice. So the reference may be rejected as it is a case of voluntary abandonment of service and loss of lien.

On the pleadings of the parties, the following issues were framed:—

- (1) Whether the reference is bad in law as it does not fall under section 2-A of the Industrial Disputes Act, 1947.
- (2) Whether the termination of services of the workman is justified and in order? If not, to what relief is he entitled?
- (3) Whether this is the case of voluntary abandonment of service by the workman himself?
- (4) Relief?

My findings on issues are as under:—

ISSUE NOS. 1 & 3:

As issue No. 1 and 3 are inter-connected, so I want to discuss these issues under same head. The representative of the respondent argued that the claimant was appointed on 31st August, 1979 on probation and he was never confirmed. The workman started remaining absent without any information with effect from 10th February 1981. The respondent sent him a letter Ex. M-1 to call him to join the duties. Ex. M-2 is the postal receipt for the letter. Again the respondent sent another letter dated 20th February, 1981 Ex. M-3 to draw the attention of the workman towards clause 13-D of the Certified Standing Order applicable to the company by which the workman absented himself without leave for seven consecutive working days or more will be deemed to have left the service of the company without notice thereby terminating his employment and in such a case employment will be automatically terminated. In spite of this letter sent through Ex. M-4 the workman did not turn up to give any explanation for his absence so his name was struck off from the roll of the company. The workman was on probation and was not doing the work properly and he was found sleeping during the duty hours and given a warning letter which is Ex. M-7. The work of the claimant was not satisfactory and the workman was on probation and never confirmed by the respondent. The Standing Orders of the respondent are Ex. M-5 in which clause 13-D is very clear for the step taken by the respondent. The

copy of the attendance register Ex. M-6 is a clear proof that the workman absented himself from the duties from 10th February, 1981 and his name was struck off on 18th February, 1981 according to the Standing Orders of the respondent company. He further argued that the Personal Officer of the company has come as witness of the respondent as MW-1 and stated the whole history of the case in the statement for justifying the termination of the workman.

The representative of the workman argued that as stated by the workman in his statement as WW-1 he was appointed on 31st August, 1979 as watchman and he was stopped at the gate on 9th February, 1981 without giving any reason for the same. The workman has stated that he visited the factory, daily after 9th February, 1981 and up to 13th February, 1981 and when he was satisfied that they have terminated the services then he gave the complaint to the Labour Inspector which is Ex. W-1 in which he has narrated the whole story about the closing of the gate. The same letter was received by the Labour Department and when the department took no step on the complaint the workman gave the demand notice on 23rd March, 1981 which is admitted by the respondent and gave the copy of the same Ex. M-8 the respondent has closed the gate of the workman without any reason or cause to terminate the services of the workman which is illegal and does not voluntary abandonment of service because the workman was stopped at the gate and was not allowed to enter in the factory. It was not in the hand of the workman to enter in the factory forcibly, and the case of the workman came under section 2-A of the Industrial Disputes Act, because it is termination and not a abandonment of service.

After hearing the arguments of both the sides and going through the file, I am of the view that the workman has failed to prove his case because when he was stopped at the gate on 9th February, 1981 he should have sent the letter to the management and copies of the same should have been sent to the Labour authorities to prove his case that he was going at the gate and he was stopped at the gate. The workman produced Ex. W-1 in the Court which was not proved by him. He should have called the Labour Office Clerk or the person who has received the complaint who could prove that the complaint was given in the Labour Office. The document Ex. W-1 did not bear any stamp

of any official and did not prove that the workman made this complaint to the Labour Department about the respondent activities. The workman could have brought another workman of the factory to corroborate this statement that the claimant was going at the gate from 9th February, 1981 to 13th February, 1981 and he was not allowed to enter in the gate which was also not done by the workman to prove his case. On the other hand the respondent sent two letters to the claimant and the workman did not reply of any letter. So on the file the workman has failed to prove his case that he was stopped at the gate and the respondent has proved that the workman was absent from duty and his name was struck off according to the Standing Orders clause 13-D which is very clear, and the dispute does not come under Section 2-A of the Industrial Disputes Act as it is not a termination and it is loss of lien and automatic termination of service. So these issues are decided in favour of the respondent against the workman.

ISSUE NO. 2 :—

After deciding the main issues in the reference in favour of the respondent, there is no need to discuss the termination. The workman was not terminated by the respondent but lost his lien by absenting himself from his duties for more than stipulated period. In these circumstances, the workman is not entitled to any relief.

Dated the 17th April, 1982.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana.
Faridabad.

Endorsement No. 900, dated 27th April, 1982

Forwarded (four copies) to the Commissioner & Secretary to Government Haryana, Labour & Employment Department, Chandigarh as required under section 15 of the Industrial Disputes Act, 1947.

HARI SINGH KAUSHIK,

Presiding Officer,
Labour Court, Haryana,
Faridabad.